

# **MIDDLE COTTONWOOD ZONING DISTRICT**

## **ZONING REGULATION**



Adopted February 1, 1996  
Amended March 6, 2001

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## **SECTION 1. TITLE, CREATION AND ADOPTION**

- 1.1 This Regulation shall be known as the "Middle Cottonwood Zoning Regulation." It is adopted for the Middle Cottonwood Zoning District which was created on February 1, 1994.
- 1.2 This Regulation is adopted pursuant to §§ 76-2-201 - 76-2-228, MCA.
- 1.3 A copy of this Regulation, Zoning Map and Description shall be kept on file for public inspection at the office of the Gallatin County Clerk and Recorder.

## **SECTION 2. INTERPRETATION**

- 2.1 In their interpretation and application, the provisions of this Regulation shall be held to be minimum requirements adopted for the promotion of the health, safety, and general welfare of the district. Wherever the requirements of this Regulation are at variance with the requirements of any other lawfully adopted rules or regulations, or wherever there is an internal conflict within this Regulation, the most restrictive requirement, or that which imposes the higher standard, shall govern.

## **SECTION 3. PURPOSES AND AGRICULTURAL USES.**

- 3.1 The general purposes of this Regulation are to promote the public health, safety, and general welfare pursuant §§ 76-2-201 and 76-2-203, MCA, and to implement the goals and policies set forth in the "Gallatin County Plan," as adopted by the Gallatin County Commissioners on June 1, 1993.
- 3.2 Specific purposes of this Regulation include, but are not limited to, the following:
  - a. To prevent overcrowding of land and undue concentration of population (§ 76-2-203, MCA);
  - b. To ensure the quality and adequate quantity of ground water (§ 76-2-203, MCA; Gallatin County Plan);
  - c. To preserve wildlife habitat (Gallatin County Plan);
  - d. To preserve and maintain agricultural lands (Gallatin County Plan);
  - e. To preserve the scenic resources of the district (Gallatin County Plan); and
  - f. To limit density as a primary method of achieving the foregoing purposes (Gallatin County Plan).

### 3.3 Agricultural Structures and Practices Exempt.

The creation of parcels for agricultural or open space purposes is exempt from this Regulation, provided that an agricultural use restriction is recorded with the parcel restricting its use for agricultural or open space purposes, and that no building or structure requiring water for human consumption or sewage facilities will be erected or utilized. The restriction shall run with the real property and be binding on all parties having any right, title or interest in the property, or any part thereof, their heirs, executors, successors, administrators, and assigns, and shall bind each owner thereof.

### 3.4 Agricultural Nuisance Acknowledgement.

Much of the property within the Middle Cottonwood Zoning District is used for agricultural production. Owners, residents and other users of adjacent property may be subjected to inconvenience, discomfort, and the possibility of injury to property and health arising from normal and accepted agricultural practices and operations, including but not limited to noise, odors, dust, smoke, the operation of machinery of any kind, including aircraft, the storage and disposal of manure, the application of fertilizers, soil amendments, herbicides and pesticides. Owners, occupants, and users of this property should be prepared to accept such inconveniences, discomfort and the possibility of injury from normal agricultural operations, and are therefore required to sign an acknowledgment setting forth this sub-section when applying for a land use permit, conditional use permit, or application for subdivision review.

## **SECTION 4. DEFINITIONS.**

For the purpose of this Regulation, certain terms and words are defined as follows:

Words used in the present tense shall also include the future.

Words or phrases used in the singular shall also include the plural.

Words used in the plural shall also include the singular.

The word "building" includes "structure," and "structure" includes "building"

The words "used" or "occupied" shall include within their meaning "intended, arranged, or designed to be used or occupied."

The word "person" shall include corporation, partnership, or other legal entity.

Where other terms and words are not defined herein, such terms and words shall be construed according to their common and ordinary usage.

Unless the context clearly indicates a different meaning, for the purposes of this Regulation, the following words and terms shall be defined as follows:

- 4.1 Agriculture. The tilling of soil, the raising of crops, horticulture and gardening, dairying or animal husbandry including all uses customarily incidental thereto, but not including any agricultural industry or business such as fruit packing plants, fur farms, animal hospitals, commercial dog kennels, commercial feed lots or similar uses.
- 4.2 Bed and Breakfast Inn. An establishment which provides overnight lodging to the public for compensation, is located in the proprietor's residence, and serves breakfast to registered guests.
- 4.3 Building. A structure, having a roof, and built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind.
- 4.4 Building Height. The average height from grade to roofline at the front of a building, for houses built on a slope, or the vertical distance from the average elevation of the proposed finish grade at the front of a building to the fascia plus the average height between the ridgeline and the fascia, for houses built where the slope is less than 4 in 12.
- 4.5 Commission. The Gallatin County Commission.
- 4.6 Conditional Use. Uses, other than permitted uses, that may be allowed in a specific zoning category, but which require a public hearing by the Commission to consider additional safeguards to maintain and assure the health, safety and general welfare of the community and to maintain the character of the Middle Cottonwood Zoning District.
- 4.7 Density. The number of dwelling units allowed per acre.
- 4.8 Dwelling, Single Family. A building designed with complete, permanent and independent living facilities for one family.
- 4.9 Dwelling Unit. A building or portion thereof providing permanent cooking, eating, sleeping and living facilities for one family and its resident domestic employees.
- 4.10 Family. An individual or two or more persons related by blood, marriage or adoption, or a group of not more than four persons (excluding servants) who need not be related by blood or marriage, living together as a single non-profit housekeeping unit.
- 4.11 Floor Area. The sum of the gross horizontal areas of the several floors of a building or structure from the exterior face of exterior walls, or from the center line of a wall separating two buildings, but excluding any space where the floor-to-ceiling height is less than six (6) feet.
- 4.12 Guest Ranch. Facility which provides accommodations to the public, offers recreational and/or educational programs, includes agricultural operations, and contains central dining facilities.

- 4.13 Home Occupation. The use of a portion of a dwelling or accessory structure as an office, studio, or work room for occupations at home.
- 4.14 Lot. A parcel or plot of land shown as an individual unit of ownership on the most recent plat or the record of subdivision.
- 4.15 Non-Conforming Parcel. A parcel, the area, dimensions or location of which was lawful prior to the adoption, revision or amendment of this zoning regulation but that fails by reason of such adoption, revision or amendment to conform to the present requirements of the zoning regulation.
- 4.16 Non-Conforming Structure. A structure, the size, dimensions or location of which was lawful prior to the adoption, revision or amendment of this zoning regulation but that fails by reason of such adoption, revision or amendment to conform to the present requirements of the zoning regulation.
- 4.17 Non-Conforming Use. A use or activity that was lawful prior to the adoption, revision or amendment of this zoning regulation but that fails by reason of such adoption, revision or amendment to conform to the present requirements of the zoning regulation.
- 4.18 Parcel. A tract or plot of land.
- 4.19 Parcel of Record. A parcel of land, irrespective of ownership, that can be identified by a legal description, independent of any other parcel of land, using documents on file in the records of the County Clerk and Recorder's office.
- 4.20 Retail. The sale of tangible personal property for any purpose other than for resale.
- 4.21 Sign. Any object, device, display, or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images.
- 4.22 Stream. Any natural water course shown on the most recent edition of the applicable U.S.G.S. topographical map that has a record of carrying a flow of water during four (4) consecutive months in a year, on average; and is also confirmed by the streams, stream/ditches, and ditches map prepared by the Montana Fish, Wildlife & Parks Department.
- 4.23 Structural Alteration. Any change in the shape or size of any portion of a building or of the supporting members of the building or structures such as walls, columns, beams, arches, girders, floor joists, or roof joists.
- 4.24 Structure. An edifice or building of any kind.

- 4.25 Trailer. A factory-assembled structure or structures, originally equipped with the necessary service connections and originally made so as to be readily movable as a unit or units on its own running gear and designed to be used as a dwelling unit without a permanent foundation, whether or not the running gear has been removed.
- 4.26 Transfer of Density Units. The removal of the right to develop or build, expressed in dwelling units, per acre, from one parcel to another parcel where such transfer is permitted; and the conveyance thereof by deed, easement or other legal instruments recorded at the Office of the Clerk and Recorder of Gallatin County.
- 4.27 Use. The purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained or occupied; or any activity, occupation, business, or operation carried on or intended to be carried on in a building or other structure or on a tract of land.
- 4.28 Wildlife Habitat. The combination of physical parameters such as food, water, vegetative cover, and space that provides for the biological and behavioral needs of wildlife for the purposes of this Regulation.
- 4.29 Zoning Enforcement Officer. The duly authorized agent appointed by the Commission for the purpose of administering and enforcing this regulation.

## **SECTION 5. BOUNDARIES, ESTABLISHMENT OF ZONES, ZONE BOUNDARIES AND ZONING MAP**

### **5.1 District Boundaries.**

The boundaries of the Middle Cottonwood Zoning District, located in Gallatin County, Montana, include private and public property and are as described and shown in the Description and on the Middle Cottonwood Zoning Map which are attached hereto and made a part hereof, respectively, as Exhibits "A" and "B."

### **5.2 Zones.**

The jurisdiction of the Middle Cottonwood Zoning District is divided into the following Zones:

<u>ZONE</u>	<u>DESIGNATION</u>
(a) Natural Resources	"NR"
(b) Agricultural and Rural Residential	"AR"
<u>AREA</u>	
Deer Winter Range Overlay Area	"WR"

5.3 Zone Boundaries.

The boundaries of the foregoing Zones are as set forth on the Middle Cottonwood Zoning Map.

5.4 Certification and Amendment of Zoning Map.

The official Middle Cottonwood Zoning Map shall be on file in the County Clerk and Recorder's office and shall bear a certificate with the signature of the Chairperson of the Gallatin County Commission attested by the County Clerk and Recorder and the date of the adoption of this Regulation. The Certificate shall read as follows:

This is to certify that this is the Official Zoning Map referred to in  
Section 5 of the Middle Cottonwood Zoning Regulation.

CHAIRPERSON, GALLATIN COUNTY COMMISSION

ATTESTED: \_\_\_\_\_  
COUNTY CLERK AND RECORDER

DATE OF ADOPTION: \_\_\_\_\_

5.5 Changes to Regulation and Map.

If any changes to the Map are made by amendment of this Regulation, such change(s) shall be made to the official zoning Map and signed, dated, and certified upon the Map or upon the material attached thereto.

5.6 Official Map and Copies of Map.

Regardless of the existence of purported copies of the official zoning Map, which may from time-to-time be made or published, the official zoning Map kept in the office of the County Clerk and Recorder shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the Middle Cottonwood Zoning District.

## **SECTION 6. NATURAL RESOURCES ZONE (NR)**

6.1 Intent.

The intent of this Zone is to provide for those lands which are currently in public ownership (state and federal) but which may be transferred into private ownership in the future and to provide for the preservation of the environmental quality, wildlife habitat and undeveloped character of these public lands. At the time that these lands are transferred into private ownership this Section and these regulations will apply to these lands.



## 6.2 Density Limit.

The density limit for residential use in the NR Zone is one (1) single family dwelling unit per one hundred and sixty (160) acres. This density limit shall remain the same if lands within the NR zone transfer to private ownership. The property that lies in the Deer Winter Range Overlay Area (WR) in the NR zone has a density limit of one (1) single-family dwelling unit per one hundred and sixty (160) acres.

## 6.3 Uses Allowed as a Matter of Right.

- a. The cultivation of ground, including the preparation of soil, planting or seeding and the raising and harvesting of trees, timber, fruits, vegetable, flowers, grains and other crops.
- b. The maintenance and use of pasture and range lands for agricultural purposes.
- c. The raising, feeding, managing and breeding of livestock, poultry, fish, birds and other animals, that do not fall under the definition of commercial feed operation.
- d. The excavation of earth and the drilling of wells, exclusively for agricultural and domestic uses.
- e. The sale on the premises of products produced thereon.
- f. The packing, storing and processing of products grown or raised on the premises, together with accessory buildings and structures required therefore.
- g. Signs warning against trespass, shooting and hunting on premises.
- h. Barns, corrals and other agricultural buildings and structures accessory to the foregoing uses.
- i. Lumber sawmills that process no more than ten thousand board feet/day of lumber per year.
- j. Gravel pits with all extraction and on-site operations limited to less than ten acres.
- k. Growing and harvesting of timber and other forest products and related activities, including logging and all operations incidental to and connected therewith.
- l. Forest stations and lookouts.
- m. Grazing.
- n. Non-motorized riding and hiking trails.

- o. Structures accessory to any use listed above.

6.4 Uses Permitted after Securing Approval of a Land Use Permit.

- a. One single family detached dwelling unit per 160 acres.
- b. Structures and uses accessory to the uses listed herein.
- c. Community-receiving antennas, microwave relay stations and electric transmission lines.

6.5 Property Development Requirements.

The setback requirements of Section 7.9.

6.6 All Other Uses are Prohibited.

All other uses not specifically allowed as a matter of right or permitted with a land use permit as specified in this Section are prohibited in the NR Zone.

## **SECTION 7. AGRICULTURE AND RURAL RESIDENTIAL (AR) ZONE**

7.1 Density Limits For Residential Use Established.

Real property in the Agriculture and Rural Residential (AR) Zone shall have density limitations for residential use.

7.2 Density Limits.

For the purpose of this Regulation, if a parcel is within 95% of the required acre minimum, it will be considered as the acre minimum. For example, a parcel which is 19 acres shall be considered 20 acres for purposes of this Regulation. Parcels of record on January 30, 2001 containing from 21 to 40 acres outside the Deer Winter Range Overlay Area may have a one time split into two parcels with the smaller parcel being no less than one-third (1/3) of the total original parcel size. *(Amended: County Commission Resolution No. 2001-28)*

7.3 Density Limits Within Deer Winter Range Overlay Area.

In the AR Zone within the Deer Winter Range Overlay Area (WR) shown on Exhibit "E" the density limit for residential use is one (1) single family dwelling unit per forty (40) acres or per parcel of record on February 1, 1994. A map showing parcels of forty (40) or more acres and parcels of record as of February 1, 1994, is attached to this Regulation and made a part hereof as Exhibit "C".

#### 7.4 Density Limits Outside the Deer Winter Range Overlay Area.

In the AR Zone outside the Deer Winter Range Overlay Area (WR) shown on Exhibit "E", which is attached hereto and made a part hereof, the density limit for residential use is one (1) single family dwelling unit per twenty (20) acres or per parcel of record on February 1, 1994. A map showing parcels of twenty (20) or more acres and parcels of record as of February 1, 1994, is attached to this Regulation and made a part hereof as Exhibit "C".

#### 7.5 Uses Allowed as a Matter of Right.

- a. The cultivation of ground, including the preparation of soil, planting or seeding and the raising and harvesting of trees, timber, fruits, vegetable, flowers, grains and other crops.
- b. The maintenance and use of pasture and range lands for agricultural purposes.
- c. The raising, feeding, managing and breeding of livestock, poultry, fish, birds and other animals, that do not fall under the definition of commercial feed operation.
- d. The excavation of earth and the drilling of wells.
- e. The sale on the premises of products produced thereon.
- f. The packing, storing and processing of products grown or raised on the premises, together with accessory buildings and structures required therefore.
- g. Home occupations.
- h. Signs warning against trespass, shooting and hunting on premises.
- i. Barns, corrals and other agricultural buildings and structures accessory to the foregoing uses.
- j. Lumber sawmills that process no more than ten thousand board feet/day of lumber per year.
- k. Gravel pits with all extraction and on-site operations limited to less than ten acres.

#### 7.6 Uses Permitted After Securing Approval of a Land Use Permit.

- a. One single-family detached dwelling per parcel of record on February 1, 1994 or per twenty acres outside the Deer Winter Range Overlay Area.
- b. One single-family detached dwelling per parcel of record on February 1, 1994 or per forty (40) acres within the Deer Winter Range Overlay Area.

## 7.7 Uses Permitted After Securing Approval of a Conditional Use Permit.

- a. The subdivision of parcels for residential development in accordance with Section 8 of this Regulation.
- b. Agricultural employee housing, including trailers, to house persons and their families whose main source of income is derived on the same farm, ranch or land unit on which such buildings are situated (development right not required).
- c. Public and private schools for the academic education of children.
- d. Quarries and quarrying operations.
- e. Oil wells, gas wells and mining.
- f. Bed and breakfast inns. No more than one bed and breakfast inn shall be allowed per parcel of record on February 1, 1994, per twenty-acre parcel created thereafter outside the WR area, and per forty-acre parcel created thereafter within the WR area. Meals served in exchange for payment shall be to registered guests only. The bed and breakfast inn must be the proprietor's actual residence.
- g. Accessory buildings and structures, the principal use of which is the pursuit of non-agricultural home occupations and hobbies.
- h. Community receiving antennas, microwave relay stations, and electric transmission lines.
- i. Guest ranches. A guest ranch operation is limited to a maximum of thirty (30) guests at one time.
- j. Places of worship, public playgrounds, parks, community centers, special events facilities, libraries, museums, and similar uses and buildings.
- k. Commercial operations whose primary business is vehicle repair.

## 7.8 All Other Uses are Prohibited.

All other uses not specifically allowed as a matter of right, permitted with a land use permit or permitted with a conditional use permit as specified in this Section are prohibited in the AR Zone.

## 7.9 Set-back Requirements.

- a. All structures shall be a minimum of 50 feet from any property line (See Exhibit "D").

- b. All structures shall be a minimum of 125 feet from the centerline of the right-of-way of East Baseline Road, Springhill Road, Toohey Road, Walker Road, Saddle Mountain Road, Summer Cutoff Road and Sypes Canyon Road (See Exhibit "D").
- c. All structures shall be a minimum of 80 feet from the centerline of the right-of-way from all other public roads (See Exhibit "D");
- d. All structures shall be a minimum of 50 feet from the high water mark of any stream or creek shown on a USGS topographical map, and which is confirmed by the Fish, Wildlife & Parks Department. This set-back is depicted on Exhibit "D" which is attached hereto and incorporated by reference.
- e. Structures existing as of the adoption of this Regulation which involve setbacks that do not conform herewith, may expand said structures, as long as the extent of the setback non-conformance does not increase.

#### 7.10 Dwelling Height.

The maximum single family dwelling height in the AR zone shall be thirty-five (35) feet, exclusive of any chimney.

#### 7.11 Floor Area.

The maximum single-family dwelling floor area in the AR Zone shall be the larger of 7,000 square feet or 500 square feet per acre of the parcel on which it is built, exclusive of the basement.

### **SECTION 8. TRANSFER OF DENSITY UNITS**

#### 8.1 Density Unit Defined.

A density unit is the right to construct a single-family dwelling unit on a parcel other than the parcel from which the density unit is being transferred. For the purposes of calculating density units, if a parcel is within 95% of the required acre minimum, it will be considered as the acre minimum for the purpose of transfer of density units. (Acre minimum, e.g. twenty (20) or forty (40) acres).

#### 8.2 General. Transfer of Density Units Authorized.

- a. Notwithstanding the density limits set forth in Sections 7.2, 7.3 and 7.4 above, certain parcels within the AR Zone may be developed to a greater density provided that there is full compliance with this Section.
- b. Owners of parcels in the AR Zone may transfer density units to any parcel within the AR Zone. Notwithstanding the foregoing sentence, no density units may be

transferred into the Deer Winter Range Overlay Area from parcels which lie in whole or in part outside the Deer Winter Range Overlay Area. Density units may, however, be transferred from parcels which lie wholly within the Deer Winter Range Overlay Area in the AR Zone to other parcels within that area. The deer winter range and the Deer Winter Range Overlay Area are delineated on Exhibit "E". No density units may be transferred to parcels which lie in whole or in part within the NR Zone.

### 8.3 Number of Density Units Which May Be Transferred.

- a. Generally. One transferable density unit shall be allotted to each parcel of record on February 1, 1994 in the AR zone, provided that no dwelling unit exists on that parcel when the density unit is to be transferred. For parcels of twenty (20) acres or more in the AR zone, including parcels created after February 1, 1994, one transferable density unit shall be allotted for each twenty (20) acres except the twenty (20) acres on which there is a dwelling unit when the density unit is to be transferred.
- b. Parcels Within the Deer Winter Range Overlay Area. For a parcel any part of which lies within the Deer Winter Range Overlay area in the AR zone, landowners shall have the following options:
  1. For parcels of record containing twenty (20) acres or less as of February 1, 1994, one (1) additional density unit shall be allotted if all units per parcel are transferred outside the Deer Winter Range Overlay Area.
  2. For parcels containing forty (40) or more acres on February 1, 1994, and which are not further subdivided, three density units shall be allotted per forty (40) acres, if all three density units are transferred outside the Deer Winter Range Overlay Area.
  3. For transfers of density units within the Deer Winter Range Overlay Area, each parcel of record on February 1, 1994, or per forty (40) acres may only transfer one (1) density unit. *(Amended: County Commission Resolution No. 2001-28)*

### 8.4 Construction of Dwelling Units Prohibited and Transfer Back.

Whenever a density units have been transferred from parcels, dwelling unit construction on those parcels is prohibited. Once the density units have been transferred off a parcel, density units may not be transferred back onto on the parcel.

### 8.5 Recording of Transfer of Density Units.

No transfer of density units shall become effective until the transferring landowner has recorded with the Clerk and Recorder of Gallatin County a restriction on the landowner's deed indicating that the density units have been transferred.

## 8.6 Mechanism for Transferring Density Units.

Up to two (2) density units may be transferred by approval of a land use permit. To transfer more than two density units to a single lot requires the approval of a Planned Unit Development application. The application shall include documentation specifying the arrangements for the transfer. The transfer of density units shall not result in a density greater than one (1) single-family dwelling per one-half (1/2) acre in those transferee parcels. Any division of land is subject to the provisions of the Montana Subdivision and Platting Act. *(Amended: County Commission Resolution No. 2001-28)*

## **SECTION 9. PLANNED UNIT DEVELOPMENT PROCEDURE.**

### 9.1 Special Definitions.

- a. Open Space. Land subject to valid restriction against housing development, the maintenance of which in its natural or agricultural state is necessary or desirable for the enhancement of living conditions in Planned Unit Developments.
- b. Plan. The provisions for development of a Planned Unit Development, including a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, and a general layout of water and sanitary facilities. The phrase "provisions of the plan", when used in these regulations, shall mean the written and graphic materials referred to in this definition.
- c. Planned Unit Development. An area of land, controlled by a landowner to be developed as a single entity for a number of dwelling units, the Plan for which may not comply with the regulation in regard to lot size, bulk or type of dwelling, density, lot coverage and required open space.
- d. Transferee. The person or entity to whom density units have been transferred pursuant to Section 8 of this Regulation.
- e. Transferee Lot. The lot or parcel of land to which density units have been transferred pursuant to Section 8 of this Regulation.

### 9.2 Planned Unit Development Required.

Whenever more than two (2) density units, as defined in Section 8 of this Regulation, are transferred to a single lot, the transferee shall submit to the County Planning Office a plan for a planned unit development on the transferee lot. The plan shall further the goals and policies of the Gallatin County Plan and the purposes set forth in Section 3.2 of this Regulation. In addition, the plan shall provide that at least one-half (1/2) of the area of the transferee lot shall be open space.

### 9.3 Procedure for Approval.

- a. The method for considering a Planned Unit Development shall be the Conditional Use Permit procedure.
- b. If the Planned Unit Development is considered a subdivision according to the definitions contained in 76-3-101 et seq., MCA, the development shall also be subject to review as set forth in the Montana Subdivision and Platting Act and Gallatin County Subdivision Regulations.

## **SECTION 10. NON-CONFORMING PARCELS, USES AND STRUCTURES.**

### 10.1 Non-Conforming Parcels.

Parcels not conforming to the density limits as of February 1, 1994, and land uses and structures not conforming as of the effective date of this Regulation, shall be allowed. A map showing parcels of record as of February 1, 1994 is attached hereto and made a part hereof as Exhibit "C." In any area structures permitted in that area may be erected on any non-conforming parcel that was of record on February 1, 1994. All other requirements and restrictions of the Zone apply to a parcel of record that does not meet parcel area requirements.

### 10.2 Non-Conforming Uses of Land.

- a. Where at the time of passage of this regulation lawful use of land exists which would not be permitted by the regulations imposed by this regulation, the use may be continued so long as it remains otherwise lawful, provided:
  1. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this regulation.
  2. No such non-conforming uses shall be moved in whole or in part to any portion of the parcel other than that occupied by such use at the effective date of adoption or amendment of this regulation.
  3. If any such non-conforming use of land ceases for any reason for a period of more than ninety (90) days, any subsequent use of such land shall conform to the regulations specified by this regulation for the District or Zone in which such land is located.
  4. No additional non-conforming structure in connection with the requirements of this regulation shall be erected in connection with such non-conforming uses of land.



### 10.3 Non-Conforming Structures.

- a. Where a lawful structure exists at the effective date of adoption or amendment of this regulation that could not be built under the terms of this regulation by reason of restriction on parcel area, parcel coverage, height, yards, its location on the parcel, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions.
  1. Non-conforming structures may be altered or enlarged such that the non-conformity does not increase by more than twenty (20) percent of the original size, as long as the number of dwelling units on the lot is not increased.
  2. Should such non-conforming structure or non-conforming portion of a structure be destroyed by catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner as it existed prior to destruction and does not require prior approval by the Commission. Any use or structure which is not substantially the same as the original use or structure must conform with the applicable provisions of this regulation. *(Amended: County Commission Resolution No. 2001-28)*
  3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the District in which it is located after it is moved.

### 10.4 Non-Conforming Uses of Structures and Buildings.

- a. If lawful use of a structure exists at the effective date of adoption or amendment of this regulation that would not be allowed in the District under the terms of this regulation the lawful use may be continued so long as it remains otherwise lawful, providing that:
  1. No existing structure devoted to a non-conforming use shall be enlarged, extended, constructed, or structurally altered, unless the use is changed to a permitted use.
  2. Any non-conforming use may be extended to any other part of a structure designed for such use, but no such use may be extended in any way to occupy land outside the structures.
  3. Non-conforming use of building, structures, or premises may be changed to another non-conforming use, provided that a conditional use permit is obtained from the Commission following the procedures of Section 13 of this regulation. In determining whether or not to grant the conditional use permit, the Commission shall determine that the proposed use is equally appropriate or more appropriate to the District or Zone than the existing non-conforming use.

4. Any structure, or structure and premises, in or on which a non-conforming use, if superseded by a permitted use, shall thereafter conform to the regulations of the District or Zone in which it is located, and the non-conforming use may not thereafter be resumed.
5. Whenever a non-conforming use of a structure or a premises ceases, the structure or premises shall not thereafter be used except in conformance with the regulations of the District or Zone in which it is located, and the non-conforming use may not thereafter be resumed.
6. If a non-conforming use is destroyed by catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner as it existed prior to destruction. Reconstruction of a non-conforming use does not require prior approval of the Commission. Any use which is not substantially the same as the original use must conform with applicable provision of this regulation.

#### 10.5 Repairs and Maintenance.

On any non-conforming structure or portion of the structure containing a non-conforming use, work may be done on ordinary repairs and fixtures, wiring, plumbing, or repair or replacement of non-bearing walls. Nothing in this regulation shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting public safety, upon order of such official.

#### 10.6 Conditional Use.

A conditional use provided for under Section 13 of this Regulation shall not be deemed a non-conforming use in the District or Zone in which it is permitted.

#### 10.7 Determination of Status of Non-Conforming Land Uses and Structures.

It shall be the responsibility of the Zoning Enforcement Officer to determine the status of non-conforming land uses and structures. If the Zoning Enforcement Officer determines that a use or structure meets the applicable criteria of Sections 10.1, 10.3, 10.4 and 10.5 above, the use or structure shall be deemed an Approved Non-Conforming Land Use or Approved Non-Conforming Structure. The following procedure shall be followed to determine the status of non-conforming land uses and structures.

- a. The owner of record of the subject use or structure shall make an application for a determination of the status of a land use or structure.
- b. It shall be the burden of the applicant to prove entitlement to approved non-conforming status by furnishing the Zoning Enforcement Officer with a preponderance of supporting information. Such information may include, but is not

limited to, septic or sewer hook-up permits, building permits, business licenses and dated photographs.

- c. The Zoning Enforcement Officer shall determine on a case-by-case basis whether a land use or structure is an existing non-conforming use or existing non-conforming structure.
- d. Appeals of the Zoning Enforcement Officer's decision shall be made in accordance with the provisions of Section 13.3.
- e. The Zoning Enforcement Officer shall maintain a record of existing non-conforming uses and structures as such information becomes available.

## **SECTION 11. VARIANCES AND SPECIAL EXCEPTIONS**

### **11.1 Purpose.**

Implementation of variances and special exceptions in Montana and other states has led to unpredictability and has undermined planning and zoning. The purpose of this Section is to minimize those risks by ensuring that variances and special exceptions be allowed only in truly exceptional circumstances and after careful and thorough deliberation.

### **11.2 Appointment of Board of Adjustment.**

Pursuant to § 76-2-221, MCA, the Commissioner shall appoint a Board of Adjustment to consider variances and special exceptions under this Regulation.

### **11.3 Criteria and Procedures.**

No variance and no special exceptions from the terms of this Regulation shall be allowed unless they meet each and every one of the following criteria and unless there is full compliance with the following procedures.

- a. The variance or special exception must not be injurious to the public health, safety, and general welfare of the community.
- b. The variance or special exception must not impair, or be inconsistent with, the Gallatin County Plan.
- c. The variance or special exception must not impair the intent or purpose of this Zoning Regulation.
- d. The variance or special exception must not adversely affect the general character, the use, or the value in the surrounding area.

- e. No variance or special exception shall be granted unless the owner seeking the variance would suffer unnecessary hardship if the variance or special exception were not granted. Within the meaning of this subsection, 11.3(e):
  - 1. Unnecessary hardship may only result from an extraordinary and exceptional situation uniquely affecting the specific property for which the variance or special exception is sought;
  - 2. A hardship induced by action of the applicant for the variance or special exception shall not constitute an unnecessary hardship;
  - 3. That the applicant for the variance or special exception could realize a higher rate of return if the variance or special exception were granted shall not be deemed an element of, or a basis for, a claim of unnecessary hardship.
- f. Any variance or special exception granted hereunder shall be the minimum necessary to alleviate the unnecessary hardship.
- g. No variance or special exception shall be allowed hereunder without the affirmative vote of at least three-fifths (3/5) of the total membership of the Board of Adjustment.
- h. No variance or special exception granted hereunder shall be effective unless the Board of Adjustment shall have made in writing detailed and specific findings that each of the foregoing provisions has been complied with.
- i. The Board of Adjustment may make any variance or special exception granted hereunder subject to such terms and conditions as it deems reasonable.

#### 11.4 Procedure.

- a. Written applications for variance shall be filed with the Zoning Enforcement Agent, along with the appropriate fee, for the purpose of defraying expenses incidental to proceedings. An application shall not be regarded as having been filed until the fee is paid. *(Amended: County Commission Resolution No. 2001-28)*
- b. The Board of Adjustment shall cause to be made such investigation of facts bearing on the application as will provide necessary information to assure that the action on each application is consistent with the intent and purpose of this Regulation.

#### 11.5 Hearing and Notice.

- a. There shall be a hearing for each application. Testimony shall be taken by the Board of Adjustment from persons interested in the application and from the Zoning Enforcement Agent.

- b. Notice of hearing shall be published once in a newspaper of general circulation within the county at least fifteen (15) days prior to the hearing date. In addition, the Zoning Enforcement Agent shall send a certified letter to record owners of property adjoining a proposed variance.

#### 11.6 Approval.

In approving an application for a variance, the Board of Adjustment may designate conditions that will secure protection for the public health, safety, and general welfare and shall find the request to meet the criteria set forth in Section 11.2. Any approval under this Section shall be subject to any terms and conditions required by the Board of Adjustment.

#### 11.7 Revocation and Modification of Variance.

A variance may be revoked or modified under the same circumstances and procedures specified for the revocation or modification of a conditional use permit in Section 13.8.

### **SECTION 12. ADMINISTRATION**

#### 12.1 Zoning Enforcement Officers.

- a. The Commission may appoint zoning enforcement officers to supervise and enforce the provisions of this Regulation.
- b. The zoning enforcement officers have those duties and responsibilities as provided by §76-2-210(1), MCA to enforce this Regulation or prevent the violation of its provisions.
- c. If the zoning enforcement officers find that this Regulation, a permit or a condition is being violated, the agent shall give written notice to the person responsible for the violation, indicating the nature of the violation and requesting the remedial action to be taken to correct or abate the violation.

#### 12.2 Duties of Board of Adjustment

- a. The Board of Adjustment has those powers and duties provided in § 76-2-223, MCA.

#### 12.3 Appeals from Decisions of Zoning Enforcement Officers to Board of Adjustment.

- a. An appeal from a decision of the Zoning Enforcement Officer may be made to the Board of Adjustment.

- b. An appeal shall be in writing, specify the grounds thereof, and shall be filed with the Zoning Enforcement Officer and the Board of Adjustment within ten (10) business days after the decision which is appealed.
- c. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as do notice to the parties in interest.
- d. All appeals of decisions made by the Zoning Enforcement Officers shall be decided within sixty (60) days of the date they are filed. If an appeal is not decided within sixty (60) days, the decision of the zoning official shall be deemed overruled.

#### 12.4 Appeals from Board of Adjustment.

Decisions of the Board of Adjustment may be appealed to a court of record by petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds for the illegality. Such petition must be presented to the court within thirty (30) days after the filing of the decision in the Office of the Board of Adjustment.

### **SECTION 13. CONDITIONAL USES.**

#### 13. Intent.

The intent of conditional use permits is to provide for specific uses, other than those specifically permitted in each District or Zone, which may be appropriate under certain safeguards or conditions.

#### 13.2 Conditional Use Requirements.

- a. No structure or land may be used for any purpose in any District or Zone where such use is not a permitted use, unless such use is listed as a conditional use in that District or Zone and approval for that use is obtained through the proper procedure.
- b. Conditional use permits shall be granted only by the Commission, when its findings are that:
  - 1. The use conforms to the objectives of the development plan and the intent of this regulation; and
  - 2. Such use will not adversely affect nearby properties or their occupants; and
  - 3. Such use meets density, coverage, yard, and all other regulations of the District in which it is to be located, unless otherwise provided for in this regulation; and

4. Public hearings have been held, after the required legal notices have been given and the public has been given a chance to be heard upon the matter.

### 13.3 Conditional Use Procedures.

- a. All applications for conditional use permits shall be filed with the Gallatin County Planning Office, accompanied with the appropriate filing fee. All conditional use permit applications must be complete before the Commission is required to consider the permit. An application is complete when it contains all of the information necessary for the Zoning Enforcement Officer to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this regulation and the development plan.
- b. The Commission shall then cause to be made such investigation of facts bearing on the application in order to provide the necessary information to assure that the action on each application is consistent with the intent and purpose of this Regulation and the Gallatin County Master Plan.
- c. Upon completion of such investigation the Commission shall hold a public hearing to gather needed facts from all interested parties. The Commission may continue such hearing, if need be, to take additional information.
- d. Notice of public hearing for conditional use permits shall be published at least once, fifteen days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be notified by certified mail.

### 13.4 Conditional Approval.

- a. The Commission may make the granting of a conditional use permit subject to reasonable limitations or conditions as it may deem necessary to enhance the appearance of the property, to reduce any adverse effects on nearby property or residences, to preserve the character of the area or to make it more acceptable in other ways. Said conditions may include but not be limited to the following:
  1. Special setbacks, yards open spaces, and buffers;
  2. Fences and walls;
  3. Lighting;
  4. Regulation of signs;
  5. Regulation of vehicular ingress and egress;
  6. Regulation of time and certain activities;

7. Landscaping and maintenance thereof;
8. Time schedule of proposed development;
9. Regulation of odors, smoke, dust, airborne particles, vibration, glare, heat, and noise;
10. Requiring dedication of rights-of-way;
11. Requiring improvements of rights-of-way;
12. Regulation of placement of uses on the property;
13. Regulation of height;
14. Regulation of the nature and extent of the use;
15. Regulation of the length of time such use may be permitted.

13.5 Security.

The Commission may require guarantees in the form of bonds, cash deposits, and/or other evidences of compliance in order to secure compliance with conditions imposed.

13.6 Expiration.

All conditional use permits issued for a definite term shall automatically expire at the end of the term.

13.7 Authorized Use.

- a. For purposes of this regulation, a conditional use permittee shall not be considered as engaging in the authorized use on the site until the following conditions are satisfied:
  1. Buildings proposed for construction in connection with the proposed use are in the process of actual construction on the site; or
  2. If remodeling proposed for existing buildings in connection with the proposed use has actually been commenced on the site; or
  3. If no construction or remodeling is contemplated, then the permittee must be regularly engaged on the site in performing the services or in selling the goods, materials, or stocks in trade of the use, and has secured all necessary federal, state, and local permits and licenses.



### 13.8 Revocation or Modification of Conditional Use Permits.

- a. A conditional use permit may be revoked or modified by the Commission only under the following circumstances:
  1. A substantial change of conditions has occurred from the time that the permit was granted; and
  2. Revocation or modification is necessary to protect the health, safety, and welfare of the area in which the property is located or the residents of the County and to preserve the integrity of existing use patterns in the area in which the property is situated; and
  3. The person holding the permit has not materially changed his position by detrimentally relying on the permit; or
  4. If the person holding the permit has not complied with the conditions of the permit.
- b. The procedures used for the consideration of an application for a conditional use permit shall be used for consideration of modification or revocation.

### 13.9 Conformance.

No conditional use permit shall be issued unless in conformance with this regulation. Permits issued on the basis of plans and specifications approved by the Commission or Zoning Enforcement Officer only authorize the use, arrangement, and construction set forth in the approved plans and applications, and no other use, arrangement or construction. A use, arrangement, or construction at variance with that authorized through the land use permit shall be a violation of this regulation.

### 13.10 Permits and Extensions.

- a. No later than forty-five (45) days prior to the expiration of the conditional use permit, the holder thereof may file written application with the Commission requesting an extension of time thereon and setting forth the reasons for such request. Each application shall be accompanied by the appropriate fee.
- b. Within five (5) days from receipt of such application for extension, the Planning Department shall send a notice of such application by mail to persons, or their successors in interest of record in the County Clerk and Recorder's office, who received mailed notice of the original application. Attached to the application shall be a notice that any person objecting to the extension shall, within fifteen (15) calendar days from the date of mailing, notify the Commission of the objection.

- c. If any objection is received from those notified, the procedures under Section 12.3 shall be followed.
- d. If no objection is received, the Commission may extend the permit for a period equivalent to the original period for which granted, or for one (1) year, whichever is shorter.
- e. An extension may only be granted upon finding of fact by the Commission that no change of condition or circumstances would have been grounds for denying the original application.
- f. The Commission shall consider requests for extension only once at the end of the approval period. The decision of the Commission shall be final. No further requests for an extension on a project having already requested an extension shall be allowed.

## **SECTION 14. LAND USE PERMITS**

### **14.1 Land Use Permits.**

- a. No structure shall be built, moved or structurally altered, and no non-conforming parcel use or structure shall be established or altered, until a land use permit has been issued under this Section.
- b. Land use permits shall be in writing and shall be in the form specified by the Commission.
- c. An application for a land use permit shall be filed with the Gallatin County Planning Office. Land use permits may be issued by the Zoning Enforcement Officer. All land use permit applications must be complete and applicable fees paid before the Zoning Enforcement Officer is required to consider the permit. An application is complete when it contains all of the information necessary for the Zoning Enforcement Officer to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this Regulation and the Master Plan.
- d. The Commission shall establish the fee required to obtain a land use permit.
- e. If an application for a land use permit is denied by the Zoning Enforcement Officer, the applicant may apply for a variance or appeal to the Board of Adjustment.

### **14.2 Certificate of Compliance.**

A certificate of compliance shall be issued by the Zoning Enforcement Officer to ensure that all exterior construction has taken place in accordance with the approved land use permit,

including any conditions imposed upon the development. This inspection shall be made upon request of the developer.

## **SECTION 15. FEES, CHARGES AND EXPENSES**

### **15.1 Fees Required.**

All applications for permits, zone changes, zone amendments, conditional uses or variances shall be accompanied by the applicable fees, which shall be established by the Commission by resolution after public notice and hearing.

### **15.2 Fees Not Refundable.**

Fees, charges, and expenses are not refundable.

## **SECTION 16. COMPLAINTS AND INVESTIGATIONS**

16.1 Any person may file a written complaint with the Commission or the Zoning Enforcement Officer alleging a violation of this Regulation.

16.2 Upon receipt of a complaint, or upon its own initiative, the Zoning Enforcement Officer shall record the complaint, immediately investigate, and take whatever action the officer considers appropriate.

## **SECTION 17. ENFORCEMENT AND PENALTIES; INJUNCTIVE RELIEF**

### **17.1 Violation and Penalties.**

A violation of this Regulation, any condition imposed through the authority of this Regulation, or any variance granted through this Regulation shall constitute a misdemeanor. A person convicted of a violation under this section shall be punished by a fine not exceeding \$500.00 or imprisonment in the county jail not to exceed six months, or both. MCA § 76-2-211.

### **17.2 Injunction.**

Upon order of the Gallatin County Commissioners, the Zoning Enforcement Officer with the assistance of the county attorney, may bring an action to enjoin violations of this Regulation.

## **SECTION 18. AMENDMENTS**

This Regulation may be amended whenever the health, safety, morals and general welfare of the people of the county are promoted according to the procedure prescribed by §§ 76-2-201 et seq., MCA, and this Regulation.

## **SECTION 19. INVALIDATION AND SEVERABILITY**

Should any section or provision of this Regulation, or any attachments or amendments hereto, be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Regulation as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

## **SECTION 20. ADOPTION**

This Regulation was adopted on February 1, 1996. (Resolution No. 1996-21.)

### ***History***

*Amended by Resolution No. 1996-21 of the Gallatin County Commission on April 23, 1996.*

*Amended by Resolution No. 2001-28 of the Gallatin County Commission on March 6, 2001.*

GALLATIN COUNTY COMMISSION

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Jennifer Smith Mitchell, Chairman

ATTEST:

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## EXHIBIT "A":

### BOUNDARIES OF MIDDLE COTTONWOOD ZONING DISTRICT: DESCRIPTION

(a) Private Property:

<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Description</u>
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1	1S	5E	
11	1S	5E	
12	1S	5E	
6	1S	6E	
5	1S	6E	S1/2, S1/2 NE1/4
7	1S	6E	Less portion of Section in Harvest Hills Subdivision
8	1S	6E	
9	1S	6E	NE1/4, W1/2 NW1/4, SE1/4 NW1/4, N1/2 SW1/4, SW1/4 SW1/4
17	1S	6E	N1/2, N1/2 SW1/4
18	1S	6E	N1/2 less portion of Section in Harvest Hills Subdivision, a portion of S1/2 North of Sypes Canyon Road, 10.82 acres TR in S1/2 that is described as follows:

"Beginning at the W1/4 corner of Section 18, thence South 87°13'30" East on and along the North line of the SW1/4 of said Section 18, a distance of 1635.00 feet. Thence South 63°02'06" West, a distance of 1832.28 feet to the West line of Section 18. Thence North on and along the West line of Section 18, a distance of 910 feet to the point of beginning. (Plat Film 9, Page 829 EXCEPTING therefrom a tract of land in the SW1/4 of Section 18, Township 1 South, Range 6 East, M.P.M., Gallatin County, Montana, more particularly described as follows: Beginning at the West 1/4 1/4 corner of said Section 18, thence South 87°15'50" East, on and along the North line of said SW1/4 a distance of 1092.44 feet to the center line of an existing county road; thence South 65°08'08" West, on and along said center line, a distance of 489.70 feet; thence South 72°28'30" West, on and along said center line, a distance of 678.37 feet to the West line of said SW1/4; thence North, on and along said West line, a distance of 462.35 feet to the point of beginning. (Certificate of Survey No. 129)" (Plat Film 94, Page 3869).

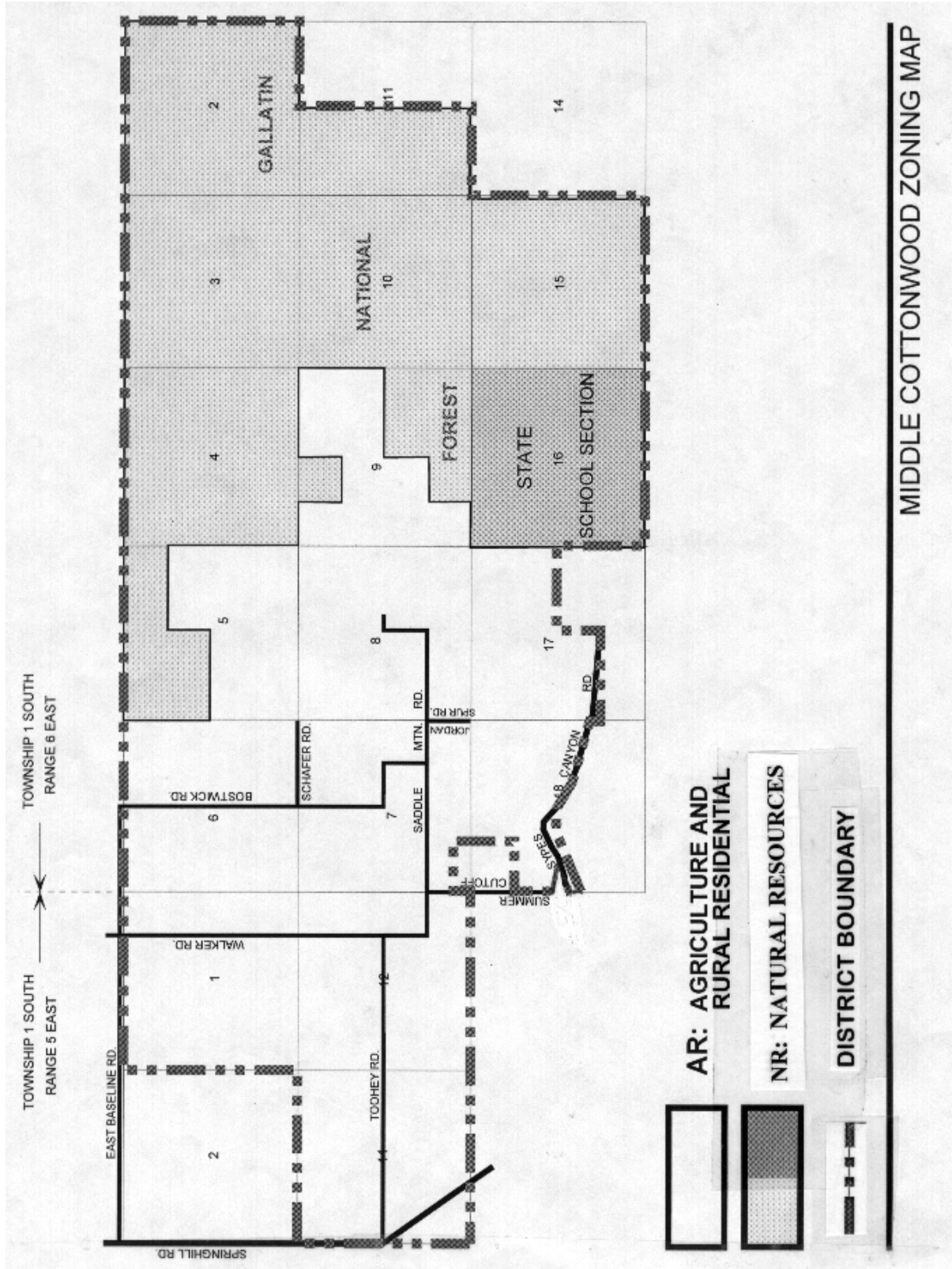
(b) Public Property:

<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Description</u>
----------------	-----------------	--------------	--------------------

16	1S	6E	State of Montana (school section); National Forest to the East of the private property to the ridge of the Bridger Mountains.
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The Northern boundary beginning at the NE corner of Section 6 will extend directly East to the mountains and the Southern boundary from the southeast corner of Section 16 will extend directly east to the mountains.

# EXHIBIT "B": MIDDLE COTTONWOOD ZONING MAP



**EXHIBIT “C”:  
MIDDLE COTTONWOOD OWNERSHIP MAP  
ATTACHMENT**

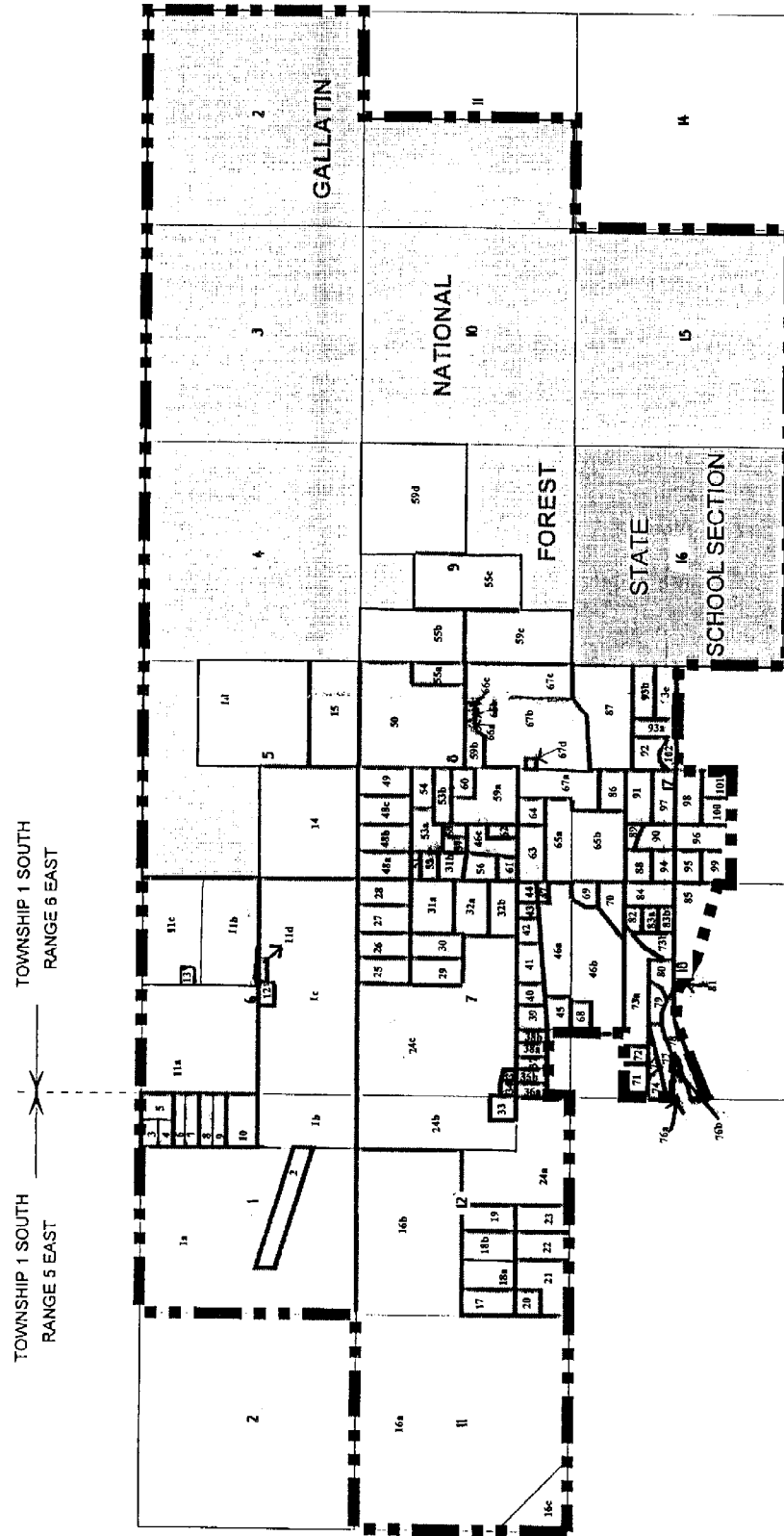
1 a	430.7a	22	20 a	46 a	50.1a
1 b	80 a	23	20 a	46 b	74 a
1 c	284 a	24 a	119 a	46 c	12 a
1 d	145 a	24 b	110 a	47	5 a
2	41 a	24 c	250 a	48 a	20.5 a
3	6.4 a	25	20 a	48 b	20.6 a
4	5 a	26	20 a	48 c	20.4 a
5	8.6 a	27	20 a	49	20.6 a
6	10 a	28	20 a	50	140 a
7	9.9 a	29	20 a	51	4 a
8	10 a	30	20 a	52	7 a
9	10 a	31 a	35 a	53 a	16.5 a
10	20 a	31 b	10 a	53 b	14.4 a
11 a	146 a	32 a	25 a	54	10.5 a
11 b	83 a	32 b	20 a	55 a	19.6 a
11 c	82.4 a	33	10 a	55 b	65.3 a
11 d	10 a	34	5 a	55 c	80 a
12	10 a	35	8.4 a	56	10 a
13	2.5 a	36 a	3.4 a	57	5 a
14	160a	36 b	5 a	58	5.3 a
15	76 a	37	5 a	59 a	39.6 a
16 a	616 a	38 a	5 a	59 b	15.5 a
16 b	240 a	38 b	5 a	59 c	63.4 a
16 c	6.2 a	39	5 a	59 d	160 a
17	20 a	40	5 a	60	10.5 a
18 a	20 a	41	11 a	61	8 a
18 b	20 a	42	5 a	62	5 a
19	20 a	43	5 a	63	20 a
20	11.2 a	44	5 a	64	10.1 a
21	20.a	45	8.1 a	65 a	30 a

65 b	60 a	82	4 a		
66 a	2 a	83 a	4 a		
66 b	2.2 a	83 b	4 a		
66 c	2 a	84	20 a		
67 a	16.6 a	85	34 a		
67 b	71 a	86	10 a		
67 c	82.2 a	87	87 a		
67 d	3.3 a	88	10.1 a		
68	3.9 a	89	5 a		
69	7 a	90	15 a		
70	16 a	91	20 a		
71	9 a	92	17.4 a		
72	4 a	93 a	7.5 a		
73 a	46 a	93 b	14.9 a		
73 b	17 a	93 c	14.9 a		
74	5 a	94	10 a		
75	5.6 a	95	10 a		
76 a	3.14 a NOT IN DISTRICT	96	20 a		
76 b	3.14 a NOT IN DISTRICT	97	20 a		
77	11.9 a	98	20 a		
78	10.8 a	99	10 a		
79	4.4 a	100	10 a		
80	12.1 a	101	10 a		
81	about 1 acre not separately surveyed	102	5 a		

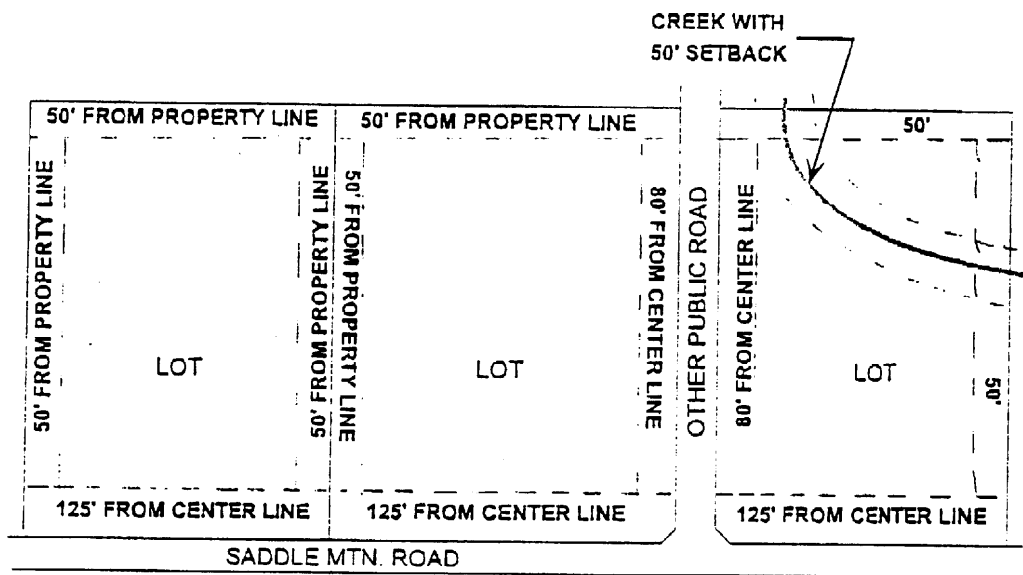
Revised 10/24/97 to correct parcel “76 a and 76 b” which is COS 129 not in the Middle Cottonwood Zoning District.



# EXHIBIT "C": MIDDLE COTTONWOOD OWNERSHIP MAP



## EXHIBIT "D": MIDDLE COTTONWOOD SETBACKS DIAGRAM



# EXHIBIT "E": MIDDLE COTTONWOOD MULE DEER WINTER RANGE MAP

